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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/803,926	03/13/2001	Tomihiko Azuma	ND209-US	8641
30743	7590	12/27/2004		
WHITHAM, CURTIS & CHRISTOFFERSON, P.C. 11491 SUNSET HILLS ROAD SUITE 340 RESTON, VA 20190				
			EXAMINER RETTA, YEHDEGA	
			ART UNIT 3622	PAPER NUMBER

DATE MAILED: 12/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/803,926

Applicant(s)

AZUMA, TOMIHIKO

Examiner

Yehdega Retta

Art Unit

3622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 19 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Amendment*

This office action is responsive to amendment filed October 19, 2004. Applicant amended claims 1, 2, 5 and 6.

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1, 3, 5, 7 and 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Owensby U.S. Patent No. 6,647,257.

Regarding claims 1 and 5, Owensby teaches service provider with *sound-only advertisement* transmitter transmitting *sound-only* advertisement to user terminal and user terminal outputting the *sound-only* signal (see fig. 1 & 2 and abstract, col. 4 lines 9-54, col. 28 lines 42-64, col. 10 lines 13-64 and col. 20 lines 18-60). Owensby teaches sending just audio

message, without including video or electronic data which satisfies the limitation of transmitting of sound-only advertisements to user terminal and the user terminal outputting the sound-only signal (see also col. 17 lines 14-53).

Regarding claims 3 and 7, Owensby teaches user terminal as mobile and an Internet network (see col. 11 line 18 to col. 12 line 37).

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 4, 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maxwell as applied to claim 1 above, and further in view of Wong U. S. Patent No. 5,898,904.

Regarding claims 2 and 6, Owensby teaches a service providing site with a sound advertisement transmitter transmitting sound advertisement converted into sound signal to mobile phone; user terminal with a sound advertisement receiver for receiving the sound advertisement data and an output unit for converting the sound advertisement into sound signal; providing service after the advertisement output (see fig. 1 & 2 and abstract, col. 4 lines 9-54, col. 28 lines 42-64, col. 10 lines 13-64, col. 17 lines 14-53 and col. 20 lines 18-60), however does not teach user terminal transmitting and acknowledgement signal to service provider site and the service provider receiving an acknowledgement signal. Wong teaches transmitting acknowledgement packets (signal) sent in response to successful receipt of a message and

transmitters, base stations and mobile terminal retransmit when an expected acknowledgement packet does not arrive after a predetermined time period (see col. 7 lines 32-45 and col. 10 line 59 to col. 11 line 15). It would have been obvious to one of ordinary skill in the art at the time of applicant's invention was made to implement Wong's transmission of acknowledgement signal in Owensby's providing targeted messages to wireless terminals in order to provide reliable service by confirming successful delivery of the message through the acknowledgement system.

Regarding claims 4 and 8 Owensby teaches user terminal as mobile and an Internet network (see col. 11 line 18 to col. 12 line 37).

#### *Response to Arguments*

Applicant's arguments filed October 19, 2004, with respect to "102" and "103" have been fully considered but they are not persuasive. However applicant's arguments with respect to "112" are persuasive, therefore, the rejection of "112" has been withdrawn.

The prior art teaches transmitting a targeted message (advertisement), which may include a video, audio and/or electronic data but which are preferably audio commercial information or advertisements, which indicate that an audio only advertisement being transmitted to a user terminal.

#### *Conclusion*

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yehdega Retta whose telephone number is (703) 305-0436. The examiner can normally be reached on 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (703) 305-8469. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Yehdega Retta  
Primary Examiner  
Art Unit 3622

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